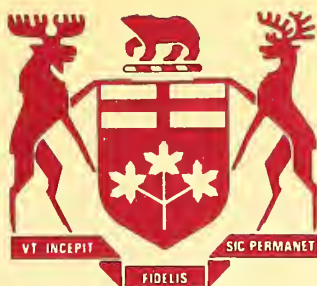




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PROVINCE OF ONTARIO

THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE
(A Three-Year Pilot Project)

FINAL REPORT
— AND —
RECOMMENDATIONS

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Persons wishing to make suggestions about the procedures or selection criteria of the Judicial Appointments Advisory Committee may forward their written comments to:

The Chair,
The Judicial Appointments Advisory Committee,
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Toronto, Ontario,
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INTRODUCTION

The Government of Ontario established the Judicial Appointments Advisory Committee as a three-year pilot project in December 1988, and asked it to develop and implement a better way of selecting judges for the provincially-appointed judiciary in Ontario. The committee has completed its three-year mandate. The time has now come to assess the pilot project and to make a permanent arrangement for a reformed system of appointing judges to the Ontario Court (Provincial Division).

In December 1988, when the then Attorney General for Ontario, The Honourable Ian Scott, announced the establishment of Ontario's Judicial Appointments Advisory Committee, he set out its mandate:

First, to develop and recommend comprehensive, sound and useful criteria for selection of appointments to the judiciary, ensuring that the best candidates are considered; and second, to interview applicants selected by it or referred to it by the Attorney General and make recommendations.

In September, 1990, the committee issued an *Interim Report* describing the committee's work during the first twenty months of its mandate. It set out the criteria and procedures adopted by the committee. It also provided a profile of the twenty-eight judges appointed as a result of the committee's recommendations. The committee distributed the report to members of the Legislative Assembly and to interested members of the public.

This purpose of this Report is threefold. First, the committee wishes to give an account of its activities since the *Interim Report*. Second, the committee highlights issues with which it has dealt in discharging its mandate. And third, the committee makes some suggestions for legislation to establish the Judicial Appointments Advisory Committee on a permanent basis.

EXECUTIVE SUMMARY

In this Report, the Judicial Appointments Advisory Committee seeks to achieve three goals:

- (a) to give a detailed account of its activities since it issued an *Interim Report* in September 1990, so that the two reports, when read together, constitute a complete record of committee work from its inception in January 1989 to the present time;
- (b) to identify and discuss concerns that have emerged about the appointment process arising from the work of the committee during the period under review; and
- (c) to recommend to government that the committee be permanently established by legislation and given guidelines governing its operations.

The committee wishes to ensure that provincial judicial appointments are made on the basis of high professional competence. The committee also recognizes that the judiciary should reflect the diversity of Ontario's population. For example, women traditionally have been significantly under-represented in the provincial judiciary.

The committee has identified problems relating to confidentiality of information about candidates, freedom of information, and fairness in the various stages of the selection process. The committee makes a number of recommendations that are designed to achieve the following objectives:

- (a) Every appointment should be made on the primary basis of high professional competence.
- (b) Appointments should reflect the diversity of Ontario's population.
- (c) The committee should be completely independent from influence by special-interest groups.
- (d) The candidates for appointment should be dealt with fairly and even-handedly by the selection process.
- (e) The committee should be prompt in making recommendations for appointment so that vacancies do not cause delay.
- (f) The committee should be accountable to the general public of Ontario as well as to the Legislature and should be required to provide periodic reports on its work.

Today, as never before, the administration of justice is under close public scrutiny. Long-established legal traditions are constantly being challenged. The authority of the court is under attack. It is essential that the judiciary deserve and maintain the respect of the general public. The recommendations contained in this report are directed to this end.

PART I

COMMITTEE ACTIVITIES SINCE SEPTEMBER, 1990

1: IMPACT OF CHANGE OF GOVERNMENT

Just as the committee was preparing its *Interim Report*, an Ontario election was held, resulting in the replacement of a Liberal government with a New Democratic Party government. The new government, through Premier Bob Rae and Attorney General Howard Hampton, quickly made it clear that it was fully committed to continuing the committee through to the completion of its three-year mandate.

In November 1990, Attorney General Hampton advised the committee, in accordance with the government's employment equity objectives, that, if possible, at least 50% of the new judges appointed should be women. The Attorney General also stressed the importance that the government attached to appointing judges from the native community and other under-represented minority groups. The committee assured the Attorney General that it would make every effort to comply with the government's wishes without compromising the high standard of excellence for which it looked in all whom it recommended for appointment.

This directive to the committee was, and still is, consistent with an objective the committee had established in advising the previous government — namely, to develop a judiciary that reflected the diversity of Ontario's population. This objective was stated in the committee's public notices of vacancies and the rationale was set out in the *Interim Report*, at page 20, as follows:

. . . the committee is also concerned about the representative nature of the Ontario judiciary. The committee believes the judiciary will better serve the community if, in a sociological sense, it is reasonably representative of that community.

and further:

The committee does not pursue the objective of improving the representative nature of the judiciary by setting numerical quotas. Nor does the committee think professional quality or personal aptitude should be sacrificed in order to obtain a more representative judiciary. The committee is on the lookout for outstanding candidates from groups that it has reason to believe are seriously under represented on the Ontario Court of Justice (Provincial Division). The committee will not, however, recommend a candidate from an under-represented group ahead of one who is not, if the latter, in all other respects, is clearly better qualified.

Now, this employment equity objective was to be pursued more systematically.

2: IMPACT OF THE DECISION IN *ASKOV* v. *THE QUEEN*

On 18 October 1990, the Supreme Court of Canada rendered its decision in *Askov v. The Queen*,¹ in which it dismissed criminal charges because of undue delay in bringing accused persons to trial in Ontario courts. The Court's decision put at risk over one hundred thousand charges in Ontario. It had an immediate impact on the work of the committee.

On 31 October 1990, Attorney General Hampton met with the committee and gave it a clear picture of the urgency of the situation resulting from *Askov v. The Queen*. He stressed the importance of moving quickly to fill existing vacancies. He also indicated that he would be working closely with Chief Judge Linden of the Ontario Court (Provincial Division) to develop a plan for appointing judges in anticipation of positions likely to come open over the next year or two.

Some time after this, the committee was informed by the Attorney General that, in addition to recommending candidates for ten vacancies then existing through death or retirement, the committee should endeavour to submit recommendations for twenty-seven other positions. In its first twenty months the committee had made recommendations for twenty-eight positions. Now it was faced with the challenge of selecting candidates for thirty-seven positions — as quickly as possible. The committee certainly had its work cut out for it!

3: NEW APPROACH TO ADVERTISING VACANCIES AND RECRUITING CANDIDATES

In view of the urgency of the situation, the committee decided to make an important change in its procedures. Up until the autumn of 1990, its selection activities had been organized around advertisements inviting candidates to apply for specific vacancies. In November, the committee placed an advertisement in eleven newspapers and the *Ontario Reports* for positions in all eight judicial regions of the province. The advertisement included a notice stating:

In the future the committee may make recommendations for vacancies on the basis of applications on file, without advertising specific positions.

The committee based this change in practice primarily on the need for a more flexible and less time-consuming process. In coping with the additional work created by the decision in *The Queen v. Askov*, the Chief Judge needed to transfer experienced judges to the most congested areas, thereby creating vacancies where they normally sat. Thus, it would be difficult to anticipate in advance where new judges might be located. The advertising cycle (placing the advertisement, running it for a few weeks and giving

1. Reported at [1990] 2 S.C.R. 1199, 113 N.R. 241, 75 O.R. (2d) 673, 42 O.A.C. 81, 74 D.L.R. (4th) 355, 49 C.R.R. 1, 59 C.C.C. (3d) 449, 79 C.R. (3d) 273.

applicants a reasonable period to submit applications) was taking nearly three months — time that the committee could ill afford in the urgent circumstances that the province's criminal justice system faced.

The committee already had on hand a very large inventory of active applications. By October 1990, 486 qualified lawyers had filed applications with the committee. The committee knew that among these were more excellent candidates than had been needed to fill the twenty-eight positions advertised up to that time. It believed that a number of those interviewed and highly ranked on the short lists submitted for each position would make outstanding judges. There were others whom the committee had not had time to interview but whose written applications were very promising. The committee felt strongly about making sure that all applicants were fully considered for new positions.

The November 1990 advertisement was the last that the committee placed. In addition to advertising, various "outreach" efforts were made to recruit candidates from under-represented groups of the community. This began in November 1990 when the committee wrote to the presidents of various associations in certain sectors — women, francophones, visible minorities, native Canadians and disabled persons — asking them to encourage outstanding lawyers known within their groups to apply for judgeships. The committee also wrote to law societies across the country asking them to draw its advertisement to the attention of their members from the minority groups.

Attorney General Hampton also actively participated in an "outreach" program. In November 1990, he wrote to 1,200 qualified women lawyers (that is, those ten years or more as members of the bar), encouraging them to consider applying for the judiciary. Shortly thereafter he wrote to various organizations representing visible and racial minorities. In April 1991, Attorney General Hampton followed this up with a letter to various groups enclosing application forms. He also issued a news release in May 1991 emphasizing the province's interest in having more candidates apply from the various under-represented groups, particularly natives and visible minorities.

These efforts produced a high volume of new applications. Over the last three months of 1990, 223 applications were received. From January to December 1991, another 130 applications were filed. This made for a total of 353 applications in the second part of the committee's mandate and an overall total of 841 over the three years. The affirmative action "outreach" program was clearly effective in dramatically increasing the number of women applicants. Just under 50% (169 of 353) of the applications received since October 1990 were from women, whereas before this, only 12% of the applicants had been women. That 12% approximately matched the percentage of Ontario lawyers with ten years' professional experience (the statutory requirement for appointment to the bench) who are women. This part of the "outreach" effort clearly paid off.

It is very difficult to measure the success of the effort to attract more applicants from the other designated groups. Human rights legislation rules out asking candidates

to identify on the application form their racial or ethnic background or whether they are disabled. In June 1991, in an effort to identify members of these groups within the applicant pool, all candidates were invited to inform the committee voluntarily whether they belonged to one of the designated minority groups — francophones, natives, visible minorities or the disabled. On the basis of the information received from applicants responding to this invitation, the committee ascertained that fifty (thirty-six men and fourteen women) of the 353 applications received since October 1990 were from lawyers who identified themselves with one of the minority groups. Although this appeared to be an increase over the earlier applications, the accuracy of this self-identification process is uncertain. The committee was sorry, but not surprised, that some of the applicants felt they were being discriminated against by this initiative.

4: INTERVIEWS

The committee continued its two-stage process of selecting candidates for interviews. First, each committee member reviewed the written applications and picked out candidates who appeared to meet the committee's criteria. For any applicant selected by two or more committee members, references were contacted and discreet inquiries made.² Second, the committee met to discuss the information received from referees and discreet inquiries. On the basis of these discussions, the committee selected the candidates to be interviewed.

The first step of this procedure was very onerous. With 486 applications already on file by the autumn of 1990 and another 353 flowing in, there were a great many applications to review. The committee was determined not to lose sight of good candidates who had applied very early but whom the committee had not had time to interview. So committee members were constantly going back to earlier applications to compare them with new applications. Also, the committee found it necessary to re-interview some of the very promising candidates it had interviewed a year or two earlier in order to compare them with newer applicants. This was particularly important for new members of the committee who had not participated in the earlier interviews.

Between December 1990 and October 1991, the committee interviewed seventy-six candidates. In December 1990, six candidates were interviewed. The majority of interviews took place in January 1991 and March 1991 when a total of fifty candidates were interviewed. In order to interview these fifty candidates over a total of four days, the committee divided itself into two panels and each panel interviewed an equal number of candidates. At the end of each day, the panels met to pool information. Although this procedure enabled the committee to get through a large number of interviews in a short period of time, the committee hopes that this two-panel system can be avoided in the future because it was very difficult for the committee as a whole to make

2. See Appendix 2 — Excerpt from the *Interim Report*, pages 9-21.

recommendations on individual candidates. The committee returned to its normal practice of having the whole committee participate in each interview for the interviews in September and October 1991, when most of the candidates were from the under-represented minority groups.

The ratio of men to women among the seventy-six interviewees was exactly one-to-one. Among the thirty-eight women interviewed were two native Canadians, two francophones, one person from a visible minority and one person who was physically-handicapped. Among the thirty-eight men interviewed were two native Canadians, eleven persons from visible minorities (one of whom was a francophone) and two physically-disabled persons.

5: RECOMMENDATIONS AND ATTORNEY GENERAL'S RESPONSE

Since 1 October 1990, the committee has recommended fifty-four candidates for appointment. Ten of these were persons who had been on short lists recommended to the previous government but who were not appointed because positions for them did not exist. So these ten were, in effect, re-recommended. The other forty-four were persons recommended for the first time, although some of them had been interviewed earlier.

During this period, the committee departed from its previous practice of always submitting to the Attorney General a short, ranked list of recommended candidates (two to five names) for each position. One reason for this was that, during this period, the committee was usually not bringing forward recommendations for specific positions. Another factor was the difficulty in having the whole committee rank candidates interviewed by separate panels. As a result, in a number of instances, the recommendation took the form of a short unranked list of names. The committee adhered, however, to the rule that it would only recommend a candidate if a majority of members thought that person would make a very good judge.

The Attorney General submitted the names of most of the persons recommended by the committee to the Judicial Council. Some candidates who had been recommended subsequently changed their minds about accepting a judgeship and withdrew their names. As with his predecessor, Attorney General Hampton took forward for appointment only those persons recommended by the committee, with the exception of one judge who was directly re-appointed after a one-year absence from the provincial bench.

Following the very large number of recommendations resulting from the committee's interviews in January-March 1991, the Attorney General held back on proceeding with a number of names, because he wished to see if additional candidates worthy of appointment could be found among the under-represented groups. That was the rationale for the special "outreach" effort in the spring of 1991 and the round of interviews in the autumn of 1991.

During the period from October 1990 to June 1992, the Attorney General submitted to the Judicial Council the names of forty-four candidates recommended by the committee. At the time of writing, thirty-nine of these have been approved by the Judicial Council and appointed by the Lieutenant Governor-in-Council to the Ontario Court (Provincial Division).

6: THE ONTARIO JUDICIAL COUNCIL

As the previous section indicates, some of the persons recommended by the committee have not been approved by the Judicial Council. Under the *Courts of Justice Act*,³ the Judicial Council must report on persons whom the Attorney General is proposing for appointment to the Provincial Division of the Ontario Court of Justice. The present Attorney General, like his predecessors, has not gone ahead with the appointment of any person on whom the Judicial Council reported negatively.

In some instances the Council has withheld its comments pending the outcome of an investigation by the Law Society into a complaint or claim against a candidate. Although the committee always checks with the Law Society before recommending a candidate, circumstances can change and a situation could arise after the recommendation has been made that needs to be investigated. In these instances, which should be rare, the appointment is delayed until that matter is satisfactorily cleared up. The committee, however, has great difficulty accepting the Judicial Council's rejection of its recommended candidates on substantive grounds.

The Judicial Council does not issue reasons for its rejections, nor has it publicly stated its criteria. These criteria appear to differ, at least in part, from those of the committee. From what committee members have been able to gather through informal conversations, the Council often insists on relevant courtroom experience and attaches little value to professional experience outside of conventional legal practice as a preparation for judicial service. This is the committee's best guess as to why candidates highly regarded by the committee and selected by the Attorney General have been turned down by the Judicial Council.

It is distressing to the committee that candidates who are selected according to its published criteria are later assessed by another body applying different criteria. The committee's criteria were developed through public consultation in the first part of its mandate. They have been frequently published and a full explanation of them is contained in the *Interim Report*.⁴ These criteria, while placing a high value on a great deal of relevant courtroom experience, do not insist on it. The committee also attaches value to professional experience outside of a normal legal office in social agencies and

3. R.S.O. 1990, c. C.43, clause 48(1)(a).

4. Pages 9-21, reproduced in Appendix 2, below.

policy development. In the opinion of this committee, it is unwise for Ontario to continue with two bodies screening and giving advice on judicial appointments. Whatever body performs this role should be accountable for its activities. Its procedures and its criteria should be known to the public.

7: JUDGES APPOINTED

For the period from October 1990, up to and including June 1992, thirty-nine appointments to the Ontario Court (Provincial Division) have resulted from recommendations made by the committee. Added to the twenty-eight appointments made during the first part of its mandate, this makes a total of sixty-seven judges appointed to the Provincial Division since the establishment of the Judicial Appointments Advisory Committee. The current complement of the Provincial Division is 260 judges. Thus, just under 26% of the judges of the Provincial Division have been selected through the committee's process.

The twenty-eight judges appointed up to the time of the *Interim Report* are listed in Appendix 3 to this report. The thirty-nine appointed since then are listed in Appendix 4. The committee is pleased to provide some facts and figures about these thirty-nine new judges and compare them with the twenty-eight judges appointed previously.

Eighteen of the thirty-nine are women. Thus, the government's employment equity objective has almost been realized. In the first period, only nine (32%) of those appointed were women. When one bears in mind that, when the committee began, only ten (or 4%) of the 245 provincial judges were women, it is clear that the committee's recommendations have resulted in the participation of many more women in the work of the Provincial Court than ever was the case in the past.

The appointments reflect a modest increase in representation of other designated groups. Two native Canadians are among the recent appointees as compared with none in the first group, and four persons from visible minorities are in the second group as compared with one in the first. The number of francophones appointed also increased from one to two.

The appointments continue to cover a wide range of ages: among the most recent thirty-nine, the youngest was thirty-five years of age and the oldest was sixty-two years of age as compared with a range of thirty-five years to fifty-five years among the earlier group. The average age has increased slightly from just under forty-three years to 43.8 years.

There is quite a shift in the professional background of the most recent group of appointees. Whereas eight of the earlier twenty-eight were Crown Attorneys at the time of their appointment, this was true of only four of the more recent thirty-nine judicial appointments.

The number doing other types of legal work in government at the time of appointment went up from two to three. Thirty-two of the thirty-nine recently appointed judges group came from private practice as compared with sixteen of the twenty-eight in the earlier group. As with the earlier group, nearly all of those recently appointed from private practice were sole practitioners or in small firms, the largest being a firm of forty-two lawyers.

The geographic pattern of the new appointees is very similar to the first group. Eleven, as compared with seven in the first group, had to re-locate to take up their positions. The other twenty-eight were all appointed to positions which were at least within commuting distance of their place of residence.

The real test of the committee's system of judicial selection is whether it leads to the appointment of judges who perform their responsibilities up to a very high standard. The committee, of course, expects that all those appointed will perform at that standard, otherwise it would not have recommended them. Only time will tell whether or not the committee's expectations will be fulfilled. But even in time, there will be no objective way of assessing the appointment system unless the recommendation made in the *Interim Report* is acted upon and the province introduces a system for evaluating judicial performance.

The *Interim Report* reads as follows at page 21:

. . . the real test of the new system of judicial selection that the committee has been developing, is whether it produces judges who fulfil their responsibilities very well. Of course, having recommended these appointments, the committee is confident that these new judges will be excellent. Until Ontario adopts procedures for evaluating judicial performance, however, it will not be easy to tell whether the committee's confidence is well placed. A system of evaluating the performance of judges has recently been proposed for Manitoba. If this system is introduced, it will be the first such system in Canada. The committee hopes that an appropriate, independent body will study judicial evaluation procedures proposed for Manitoba, as well as those used in the United States, and take steps to establish a good system for Ontario. Only then will there be an objective way of assessing a selection system. The committee feels that, if performance review is to shed any light on whether the new selection system is an improvement on the old, it must be applied to judges appointed under both systems.

Recommendation 1:— A system to evaluate the performance of provincial judges be developed and implemented in Ontario.

8: CHANGES IN COMMITTEE MEMBERSHIP

With the resignation of Mr. Robert Muir in December 1990, the committee's membership was reduced from ten to nine. Even before the increase in its work-load, the committee was finding it difficult to discharge its responsibilities with only ten members. In December 1990, the committee welcomed the new government's appointment of four additional members — Ms. Anne Cox, Executive Director of the Thunder

Bay Indian Friendship Centre; Professor Emily Carasco of the Faculty of Law, University of Windsor; Ms. Patricia Park, Executive Director of the Elizabeth Fry Society in Ottawa and Ms. Michelle Rocheleau of the law firm of Evans, Bragagnolo and Sullivan in Timmins.

With these appointments, the committee entered its new round of activities with thirteen members. Compared with its earlier composition of one judge, three lawyers and six lay persons, it now had one judge, five lawyers and seven lay persons. In addition, the committee now had a female majority (seven out of thirteen) and membership from the aboriginal, franco-Ontarian and South Asian communities as well as from all regions of the province.⁵

9: SUPPORT STAFF

Early in 1991, Ms. Susan Dunn, the committee's Administrative Officer, left the Ministry of the Attorney General to take up the position of Board Secretary, Environmental Appeal Board. The committee was certainly sad to see Ms. Dunn go, because, as stated in the *Interim Report*, her work for the committee was outstanding. The position was then advertised internally and outside the government.

During the search for Ms. Dunn's replacement, the committee was ably assisted by Ms. Eileen Beattie in the Office of Judicial Support Services. The committee would like to record its appreciation for the friendly and efficient help that it received from Ms. Beattie during this period.

At the beginning of June, 1991, Ms. Ann Kelly took over as the committee's permanent Administrative Officer and committee Secretary. Ms. Kelly came to the committee with extensive experience in the criminal justice system as office manager in both a private law firm and in the Toronto Crown Attorney's office. As Administrative Officer and committee Secretary, she has carried out her responsibilities in an intelligent and professional manner during a most difficult time. That the committee was able to handle the heavy workload thrust upon it was in large measure due to Ms. Kelly's hard work. The committee members have enjoyed working with her and would like to record here their gratitude for her fine services.

The committee also extends its thanks to Ms. Carol Chan who, by providing efficient secretarial and clerical services, greatly assisted Ms. Kelly in her task, and to Mr. Keith Norris, the Manager of the Office of Judicial Support Services, for his support and cooperation over the past three years.

5. Profiles of committee members are provided in Appendix 1.

PART II

RECOMMENDATIONS AND CONSIDERATIONS FOR THE FUTURE

10: RECOMMENDATIONS FOR DRAFT LEGISLATION

In addition to its original mandate, to select, interview and recommend suitable candidates for judicial appointment, the committee has also spent time developing recommendations for the future. Soon after taking office, Attorney General Hampton informed the committee that he intended to have legislation drafted to establish the Advisory Committee on a permanent basis. A member of the Ministry of the Attorney General staff, Mr. John Twohig, was given the task of soliciting views on this matter from interested groups and individuals across the province. Mr. Hampton also asked this committee to submit its views on future legislation.

In April 1991, a sub-committee chaired by Associate Chief Judge Robert Walmsley was struck to prepare some proposals on draft legislation. In preparing its proposals, the sub-committee took into account submissions made by various other groups. Subsequently, the full committee met to consider the proposals prepared by the sub-committee. After extensive discussions, the committee agreed to a set of proposals that it submitted to Mr. Twohig on 11 September 1991.

The committee's proposals, as amended, are as follows:

Recommendation 2:— The Judicial Appointments Advisory Committee should be established by legislative amendment to the *Courts of Justice Act*.

Recommendation 3:— The committee should have discretion to develop its own procedures.

Recommendation 4:— The committee should be required by statute to provide an Annual Report to the Legislature. The report should contain an account of the committee's procedures. (To be included in legislation)

Recommendation 5:— The Attorney General, in consultation with opposition leaders, should appoint members to the committee who reflect the diversity of Ontario's people. (To be included in legislation)

Recommendation 6:— The mandate of the committee should be to develop and maintain criteria for the appointment of provincial judges in Ontario and to recommend persons who are the best qualified for appointment according to those criteria. (To be included in legislation).

Recommendation 7:— An objective of the committee should be to produce a judiciary that reflects the diversity of Ontario's people. (To be included in legislation)

Recommendation 8:— All applications for judicial appointments should be

- (a) forwarded to and reviewed by the committee; and
- (b) appointed by the Attorney General from a list of qualified candidates recommended by the committee. (To be included in legislation)

Recommendation 9:— The committee should be the *only* recommending body. The Ontario Judicial Council should not have a role in the judicial appointments process. (To be included in legislation)

Recommendation 10:— The committee should be comprised of eleven members as follows:

- (a) six lay persons (to be appointed by Attorney General in consultation with opposition leaders);
- (b) three lawyers (one nominated by the Law Society of Upper Canada, one by the Canadian Bar Association and one by the Attorney General), *at least one of whom specializes in criminal law and at least one who specializes in family law;*
- (c) two judges, one nominated by the provincial judges and the other by the Attorney General, *one experienced in criminal law and one experienced in family law.*

Seven members would constitute a quorum that must include at least one judge and one lawyer. (The committee believes that there would be more flexibility if the committee's composition is dealt with by regulation rather than legislation.)

Recommendation 11:— committee members should be appointed for a three-year term renewable for up to three years. Appointments should be staggered so that experienced members would always form part of the committee.

Recommendation 12:— The chair should be appointed by the Attorney General for a term of three years plus a further term of up to three years.

Recommendation 13:— The chair should receive remuneration commensurate with the responsibilities involved plus expenses. committee members should receive an honorarium plus expenses.

11: PROCEDURAL AND POLICY ISSUES:

The committee believes that most of the basic policies governing the appointment process should be set out in legislation. The procedures and criteria would be more appropriately located in regulations.

In its *Interim Report*, and again in this report, the committee has described its procedures and criteria, and endeavoured to explain their rationale. There are some issues that have arisen in the course of the committee's mandate that it believes any future committee will have to face and on which it would like to comment here. By spelling out these issues, the committee hopes that there will be some public input into the way a judicial selection committee such as this operates. This public input will be of assistance to any future committee in adopting suitable policies and procedures.

11.1: Identification of Vacancies

The committee recognizes that the experience of the past year or so does not necessarily provide a reliable guide to future planning. During 1991, the committee processed more than thirty-five appointments in order to meet the problem of delay resulting from the decision of the Supreme Court of Canada in *Askov v. The Queen*. Henceforth, the committee should plan for a regime wherein it may normally expect that ten to fifteen appointments will be made annually.

Whenever possible, the committee should have timely notice of a vacancy so that it may complete its recommendations well before the actual vacancy date. In addition, vacancies need to be identified in such a way that the area of search is narrowed to a manageable size.

With those preliminary considerations in mind, the committee recommends that the following procedures be adhered to when identifying the need for a new appointment:

Recommendation 14:— Judges should advise the Chief Judge of their impending retirement or election to part-time service a minimum of six months in advance of the actual departure date.

Recommendation 15:— The Chief Judge should immediately write to the Attorney General requesting a replacement. A copy of the request should be sent to the chair of the committee, thereby giving the committee early warning of impending work.

Recommendation 16:— The request should specify,

- (a) *The location of the vacancy:—* It is best to specify a particular city or town, rather than a judicial region. All vacancies are to be advertised so that candidates will apply for a very specific location.

It is hoped that this will reduce requests for change of location. Relocating a judge can be a costly process. Occasionally, however, a judge *will* be appointed to a region because of need at several locations within that region. This requirement should be made clear to the candidates ahead of time, both in the advertisement and at the interview.

- (b) *The specialty of law, if any:*— Most candidates have a preference either for criminal law or for family law. When informed by the Attorney General that a vacancy requires a criminal court judge or a family court judge, the committee should advertise that vacancy in that way. These preferences should be respected, and should guide the committee's search. On occasion, both disciplines will be required (as in many locations in the north) and this requirement should be made clear to the candidates in the advertisement and at the interview.
- (c) *Any special conditions pertaining to the vacancy:*— The need for extensive travel is an example of a special condition, as is the need to use small aircraft routinely to reach distant courts. No doubt, there are other conditions that, on occasion, should be stipulated to the candidates ahead of time.

Recommendation 17:— Following receipt of the letter from the Chief Judge, the Attorney General should request the committee to conduct a search and to advise on the names of suitable candidates as soon as reasonably convenient. This request will normally form the *official* mandate for the committee to commence its work.

Recommendation 18:— Each vacancy should be advertised so as to focus the candidate search, thereby reducing the time demands on the committee. This will also serve an additional purpose. It will provide an opportunity to re-iterate any government employment equity initiative as well as to give notice in a particular city or town or in publications directed to designated groups.

Recommendation 19:— Vacancies will normally occur as a result of retirement or election to part-time service. In these cases, the committee will have adequate time to carry out the foregoing procedures. In the event of sudden serious illness or death, however, the Attorney General could, in such exceptional circumstances, request the committee to carry out an expedited search.

The appointments process should seek to provide the best available selection of candidates in a timely fashion, so that the disruption of court business is kept to a

minimum. The public is entitled to a court system that strives to reduce delay. Filling vacancies promptly shows a commitment to this.

On occasion during the three year period, the committee was perceived not to have acted quickly in filling vacancies. It should be noted that the committee cannot *start* its process until it is requested to do so by the Attorney General.

11.2: Advertising Vacancies and Processing of Candidate Information Forms

In the past three years, the members of the committee have read and assessed 841 application forms, each ten pages in length. The earnest desire of members to ensure fairness when reviewing applications both new and old involved a tremendous amount of work and placed a heavy burden of responsibility on committee members. Despite the desire of the committee not to lose sight of excellent candidates, it became apparent that it was not feasible to keep applications active for three years.

It is the recommendation of this committee that in order to rectify the above situation and ensure fairness to all candidates, the committee's procedures should be amended, effective immediately, as follows:

Recommendation 20:— All vacancies should be advertised.

Recommendation 21:— In order to be considered for a judicial appointment, a candidate must apply for *each* advertised vacancy by,

- (a) submitting a completed personal information form, or
- (b) if he or she has applied on a previous occasion within one year, by submitting a one-page letter confirming his or her wish to be considered for the vacancy.

Recommendation 22:— The committee's present practice of automatically reviewing all applications should be discontinued.

11.3: Reference Calls and Discreet Inquiries

When candidates move out of the general list on to a shorter list, the committee makes inquiries about the applicants from referees as well as other confidential sources. The latter inquiries have been dubbed "discreet inquiries". committee members are assigned names of applicants and are free to make inquiries from lawyers, judges or others with whom an applicant may have worked, before whom the applicant may have appeared or or who know the applicant in a professional or community-oriented capacity. The results were mixed but generally useful.

In April 1991, the committee divided into regional teams for the purpose of discreet inquiries. Each team had a leader who co-ordinated the distribution of names and collection of information. The committee also discussed sample questions that might be asked. For example,

- What qualities in X make X particularly appropriate for a judicial appointment?
- If X were to be appointed a judge, what concerns if any would you have about X in that capacity?
- How would the appointment of X be accepted in your community?

Although the practice of making discreet inquiries may have disadvantages, this committee feels that it plays an important part in the selection process.

Recommendation 23:— Although the practice of making discreet inquiries about a candidate may have disadvantages, it plays an important rôle in the selection process and should be continued in the present form.

11.4: Interviews

The list of candidates to be interviewed is established by a fairly lengthy process. First, each committee member sends to the committee secretary the names of their candidates, and a consolidated short list is established based on the “rule of three”, that is, any name listed by three committee members is included. Originally, the committee used a “rule of two”.

Second, reference calls and discreet inquiries are made about each candidate on this short list. The committee then meets to decide, on the basis of the application and the references, which candidates to interview. This meeting usually involves long and difficult discussions because the quality of the candidates makes it hard to reduce the interview list to a practical number. The selected candidates are invited to be interviewed.

Before the interview, the committee secretary checks with the Law Society about possible serious complaints or disciplinary matters.

Interviews are scheduled at hourly intervals, with each one taking forty-five to fifty minutes. The committee tries to restrict the number to a maximum of seven in a day. Even seven will require at least an eight-hour meeting and more likely, up to ten hours because of the time needed for discussion when selecting and ranking candidates’ names for inclusion on the short list of recommendations to be submitted to the Attorney General.

The committee tries to be consistent in the interviews, but it has found from experience that it cannot ask the same set of questions in each interview. Candidates

compare notes and future candidates could arrive with rehearsed responses. As with any job interview, the judicial appointments interview is an attempt to add to what the committee knows from the written application and from references. In particular, the committee tries to assess the candidate's "fit" with its established criteria. This means that, in addition to professional excellence, it is looking for such qualities as decisiveness, commitment to public service, sensitivity to changes in social values, respect for the dignity of all people, moral courage, integrity, fairness and absence of pomposity.

The committee repeatedly assesses every aspect of the process leading to recommendations, including the interview itself. The committee occasionally hears from people who have been interviewed and their comments are taken very seriously. The committee has been told that some of its questions, or its style of questioning can be too tough, or that the number of interviewers — up to thirteen — is intimidating. The committee knows from observation that many candidates are extremely nervous, and some confide that it is the first time ever, or in a great many years, that they have been interviewed for a job.

The committee wrestles, as do all employment interviewers, with the question of relevance, and with the danger of being so charmed by a personality that the real requirements for the position may be overlooked. It frequently reviews the qualities it is seeking, and continues to try to refine its questioning in order to reveal those qualities or lack of them.

A major problem in the process occurred when a large number of appointments had to be made quickly. For a committee composed entirely of volunteers, most with heavy full-time jobs, finding time just to read applications was difficult, but the need to make reference checks and interview large numbers of candidates meant an almost impossible time commitment. The committee decided to interview in two panels once the committee numbers were increased. Each panel interviewed the same number of candidates. The final decision on each candidate was made by the whole committee. This system saved time, of course, and made possible the interviewing of large numbers of candidates. The committee agreed also that the decisions made using the panel system were fair and the successful candidates were excellent. The committee, however, prefers to work as a single group rather than in panels and agreed to do so once the heaviest part of the work was completed and the large number of required appointments made. The committee feels that although the interview process is lengthy, it is fair and works well.

Recommendation 24:— The established interview process, although lengthy, is fair, and should continue in its present form.

11.5: Ranking

The committee believes that a ranked short list of recommended candidates should be submitted to the Attorney General rather than single names. If it were to submit just one name for each position, then the Attorney General would be under great pressure to appoint that person. In the view of the committee, such a practice would go too far in removing responsibility for judicial appointments from an accountable minister.

As the first part of this Report explains, because the committee had to make a great many recommendations for unspecified positions in the second part of its mandate, it deviated from its earlier practice of always submitting ranked lists of two to five names for each position.

An advantage of the ranked list is that it gives a more precise indication of the committee's assessment of candidates. During the term of this committee, the Attorneys General have respected this ranking and rarely passed over a more highly ranked candidate for one ranked lower. On the other hand, it might be argued that ranking narrows the Attorney General's discretion too much. It is known from experience just how difficult it is to reach a consensus on the relative merits of a group of excellent candidates. Often the committee could not reach an unanimous decision on the precise ranking and had to submit several rankings.

The one principle of the candidate-ranking process to which any future committee should adhere is to recommend to the Attorney General only those persons who, in the opinion of the majority of the committee, would make very good judges.

Recommendation 25:— Candidates should be recruited and interviewed for specific vacancies and their names should be recommended to the Attorney General under the current ranking system.

11.6: Confidentiality

The committee reviewed its policy regarding the importance of maintaining confidentiality and what information candidates should be given regarding the status of their application (for example, whether they have or have not been recommended for consideration by the Attorney General).

Originally, because the process involved consideration and reconsideration of candidates on the basis of location, the area of expertise and the qualifications for a particular judicial appointment, it was impossible to advise a candidate about the status of his or her application. In addition, once the recommendation was made to the Attorney General, a considerable amount of time could elapse before any action was taken on the recommendation. These factors were beyond the control of the committee.

Consequently, it was decided that candidates should not be advised of the status of their application after an interview, except to confirm that any candidate who was recommended by the committee would hear from the Attorney General or the Ontario Judicial Council in due course. The committee also felt that that, by not disclosing to a candidate whether he or she had been recommended, it avoided the possibility of any actual or perceived political influence or pressure on the appointment process

The committee feels that its policy of strict confidentiality should be maintained and that all information obtained from a candidate's application form, referees, discreet inquiries to bench, bar and community representatives should be kept in strictest confidence. It is essential to the process that the candidate's right to privacy be respected. At the same time, the committee's duty to review the potential candidates must not be hampered.

After reviewing its position with respect to the notification of candidates, the committee is still of the opinion that recommendations made by it to the Attorney General should not be disclosed. Nevertheless, because of the number of inquiries and letters received from candidates seeking information as to the status of their application, it is apparent that some amendment of this policy is needed with respect to the notification of candidates who,

- (a) are not selected for an interview,
- (b) have been interviewed but not recommended, and
- (c) candidates who have been ranked and recommended but not appointed.

Recommendation 26:— The committee's policy of strict confidentiality should be maintained. Nevertheless, because of the number of candidates who ask for information about the status of their application, an exception should be created for notifying unsuccessful candidates who,

- (a) have not been selected for an interview;
- (b) have been interviewed but not recommended; and
- (c) have been ranked and recommended by the committee but not appointed by the Attorney General.

11.7: Creating and Maintaining a Pool of Candidates

If the Attorney General is required to select from a list submitted by the committee, the influence of political favouritism could come back into play if a sufficiently large pool of recommended candidates is created. This, indeed, is what happens under the federal system. Advisory committees in each province produce long lists of "qualified" candidates from which federal politicians are free to select on a political basis. Under that system, an advisory committee simply becomes a cloak for political patronage. It is the hope of this committee that this does not happen in Ontario.

As stated previously, during the period from December 1990 to December 1991, the committee had to make a great many recommendations for unspecified positions, which resulted in the creation of a sizeable list of recommended candidates for consideration by the Attorney General.

During the latter part of the committee's mandate, the committee was concerned about the size of the pool of recommended candidates who had not been appointed. It saw no evidence of political patronage in selecting from this pool but was concerned that, if it even appeared to be a possibility, the credibility of the process could be undermined.

The committee does not think it feasible to set an absolute limit on the size of the pool of recommended candidates that should be before the Attorney General at any given time. It would, however, suggest that, in the future when an Attorney General does not proceed with the appointment of highly ranked candidates, the reason for not doing so be communicated to the committee. Certainly, in the committee's view, it would be unwise for an advisory committee to go on giving advice if, over a significant period of time, that advice is being disregarded.

The committee believes that there are several disadvantages to maintaining a pool of candidates.

- In accordance with a policy of strict confidentiality, candidates are not advised when they are recommended to the Attorney General and are, therefore, left in a state of "limbo" which could result in a wait of several months before a candidate is contacted.
- The maintenance of a pool of candidates could result in the perception of political patronage.

Recommendation 27:— After notification in Recommendation 26, the names of unsuccessful candidates should be sent back to the committee's files and not maintained in a pool either by the Attorney General or by the committee.

11.8: Employment Equity

In its *Interim Report*, the committee expressed its concern with respect to the representative nature of the Ontario judiciary, as follows: (page 20, 2nd paragraph):

The committee believes the judiciary will better serve the community if, in a sociological sense, it is reasonably representative of that community. The committee believes this for two reasons. First, it is important that the perspectives of the various racial and ethnic groups that make up Ontario society, and the outlook and experience of women as well as men should influence how justice is administered. Judges have a great deal of discretion in interpreting and applying the law. In the Ontario Court of Justice (Provincial Division), this is particularly true with regard to sentencing and the resolution of family problems.

This discretion will be exercised more effectively and fairly when the judiciary is not dominated by a single race, or ethnic group or gender. Second, the judiciary is likely to be more credible when significant sections of the community do not appear to be excluded from its membership. Judges of the Ontario Court of Justice (Provincial Division) exercise great powers; they can impose years of imprisonment on a citizen and authorize the removal of children from the custody of their parents. Those who are subject to such decisions are likely to have more confidence in their fairness when they see members of their own social group appointed to the court that makes them.

In November 1990, the committee, in accordance with its objective to develop a judiciary that is representative of the community it serves and the government's employment equity goals mentioned earlier in this report, commenced various "outreach" activities. These initiatives took the form of contacting various associations in the five under-represented communities, (women, francophones, visible minorities, native Canadians and disabled persons) requesting them to encourage qualified lawyers within their communities to apply for a judicial appointment. The Attorney General also made a concentrated effort to encourage members from these under-represented groups to make application for appointment to the provincial bench.

The committee is delighted to report that, despite any perceived shortcomings, these initiatives resulted in the recruitment of well-qualified candidates from under-represented groups.

Recommendation 28:— Employment equity initiatives should continue to be taken to increase the representative nature of the judiciary.

12: CONCLUSION

The committee has completed its three-year pilot term. It has been a very rewarding experience and one that is unique. The committee is a true nominating committee. It is a completely independent body with a mandate to select, interview and recommend to the Attorney General suitable candidates for judicial appointment.

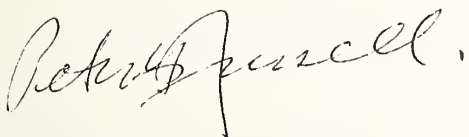
The committee has developed and established a process to ensure that only qualified candidates are appointed judges of the Ontario Court (Provincial Division), that Ontario's judicial system attends to the needs of the community and reflects the diversity of its population. It has also removed any real or perceived political bias or patronage in judicial appointments.

The committee is proud of its achievements. Although the workload has been heavy, the experience has been worthwhile. The appointments made as a result of its recommendations have, in general, been well received.

The committee is delighted that the Attorney General intends to table legislation that formally establishes the Judicial Appointments Advisory Committee on a permanent basis in the Fall of 1992. Meanwhile, at the Attorney General's request, most of the

members of this committee will continue in their present roles to preserve the continuity of the process.


All of which is submitted by:



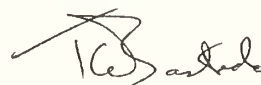
Professor Peter Russell,
Past Chair, January 1989 — April 1992



Professor Emily Carasco,
Chair, April 1992 — present



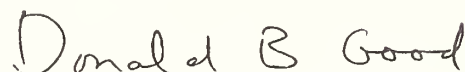
Denise Korpan, Member



Tom Bastedo, Member



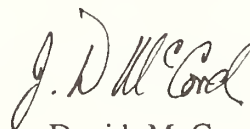
Valerie Kasurak, Member



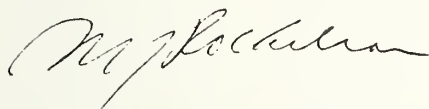
Donald Good, Member



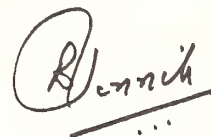
Kay Sigurjonsson, Member



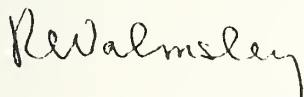
David McCord, Member



Michelle Rocheleau, Member



Ben Sennik, Member



Associate Chief Judge Robert Walmsley,
Member



Anne Cox, Member

RECOMMENDATIONS OF THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

PERFORMANCE EVALUATION OF JUDGES

Recommendation 1:— A system to evaluate the performance of provincial judges be developed and implemented in Ontario.

FORMALIZING EXISTENCE OF THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

Recommendation 2:— The Judicial Appointments Advisory Committee should be established by legislative amendment to the *Courts of Justice Act*.

Recommendation 3:— The committee should have discretion to develop its own procedures.

Recommendation 4:— The committee should be required by statute to provide an Annual Report to the Legislature. The report should contain an account of the committee's procedures. (To be included in legislation)

Recommendation 5:— The Attorney General, in consultation with opposition leaders, should appoint members to the committee who reflect the diversity of Ontario's people. (To be included in legislation)

Recommendation 6:— The mandate of the committee should be to develop and maintain criteria for the appointment of provincial judges in Ontario and to recommend persons who are the best qualified for appointment according to those criteria. (To be included in legislation).

Recommendation 7:— An objective of the committee should be to produce a judiciary that reflects the diversity of Ontario's people. (To be included in legislation)

Recommendation 8:— All applications for judicial appointments should be

(a) forwarded to and reviewed by the committee; and

(b) appointed by the Attorney General from a list of qualified candidates recommended by the committee. (To be included in legislation)

Recommendation 9:— The committee should be the *only* recommending body. The Ontario Judicial Council should not have a role in the judicial appointments process. (To be included in legislation)

Recommendation 10:— The committee should be comprised of eleven members as follows:

(a) six lay persons (to be appointed by Attorney General in consultation with opposition leaders);

(b) three lawyers (one nominated by the Law Society of Upper Canada, one by the Canadian Bar Association and one by the Attorney General), at

least one of whom specializes in criminal law and at least one who specializes in family law;

- (c) two judges, one nominated by the provincial judges and the other by the Attorney General, **one experienced in criminal law and one experienced in family law.**

Seven members would constitute a quorum that must include at least one judge and one lawyer. (The committee believes that there would be more flexibility if the committee's composition is dealt with by regulation rather than legislation.)

Recommendation 11:— committee members should be appointed for a three-year term renewable for up to three years. Appointments should be staggered so that experienced members would always form part of the committee.

Recommendation 12:— The chair should be appointed by the Attorney General for a term of three years plus a further term of up to three years.

Recommendation 13:— The chair should receive remuneration commensurate with the responsibilities involved plus expenses. committee members should receive an honorarium plus expenses.

IDENTIFICATION OF VACANCIES

Recommendation 14:— Judges should advise the Chief Judge of their impending retirement or election to part-time service a minimum of six months in advance of the actual departure date.

Recommendation 15:— The Chief Judge should immediately write to the Attorney General requesting a replacement. A copy of the request should be sent to the chair of the committee, thereby giving the committee early warning of impending work.

Recommendation 16:— The request should specify,

- (a) the location of the vacancy;
- (b) the specialty of law, if any; and
- (c) any special conditions pertaining to the vacancy.

Recommendation 17:— Following receipt of the letter from the Chief Judge, the Attorney General should request the committee to conduct a search and to advise on the names of suitable candidates as soon as reasonably convenient.

Recommendation 18:— Each vacancy should be advertised so as to focus the candidate search, thereby reducing the time demands on the committee.

Recommendation 19:— Where vacancies occur not as a result of retirement or election to part-time service, but as a result of sudden serious illness or death, the Attorney General could, in such exceptional circumstances, request the committee to carry out an expedited search.

ADVERTISING VACANCIES AND PROCESSING PERSONAL INFORMATION FORMS

Recommendation 20:— All vacancies should be advertised.

Recommendation 21:— In order to be considered for a judicial appointment, a candidate must apply for *each* advertised vacancy either,

- (a) by submitting a completed personal information form, or
- (b) if he or she has applied on a previous occasion within one year, by submitting a one-page letter confirming his or her wish to be considered for the vacancy.

Recommendation 22:— The committee's present practice of automatically reviewing all applications should be discontinued.

REFERENCE CALLS AND DISCREET INQUIRIES

Recommendation 23:— Although the practice of making discreet inquiries about a candidate may have disadvantages, it plays an important rôle in the selection process and should be continued in the present form.

INTERVIEW PROCESS

Recommendation 24:— The established interview process, although lengthy, is fair, and should continue in its present form.

RANKING

Recommendation 25:— Candidates should be recruited and interviewed for specific vacancies and their names should be recommended to the Attorney General under the current ranking system.

CONFIDENTIALITY

Recommendation 26:— The committee's policy of strict confidentiality should be maintained. Nevertheless, because of the number of candidates who ask for information about the status of their application, an exception should be created for notifying unsuccessful candidates who,

- (a) have not been selected for an interview;
- (b) have been interviewed but not recommended; and
- (c) have been ranked and recommended by the committee but not appointed by the Attorney General.

MAINTAINING A POOL OF RECOMMENDED CANDIDATES

Recommendation 27:— Following notification in Recommendation 26, the names of unsuccessful candidates should be sent back to the committee's files but not maintained in a pool either by the Attorney General or by the committee.

EMPLOYMENT EQUITY

Recommendation 28:— Employment equity initiatives should continue to be taken to increase the representative nature of the judiciary.

— APPENDIX 1 —

A PROFILE OF THE JUDICIAL APPOINTMENTS ADVISORY COMMITTEE MEMBERS

Professor Peter Russell, Toronto

Committee Chair, January 1989 — April 1992

Mr. Russell is a professor of Political Science and Director of Graduate Studies for the Department of Political Science at the University of Toronto. A Rhodes Scholar and Officer of the Order of Canada with a distinguished list of academic and professional credits, Mr. Russell Served on the Legal Aid Committee of Ontario and as a research advisor for the Canadian Bar Association Committee on the Appointment of Judges. He has authored numerous books and articles on the judiciary and the constitution including: *The Judiciary in Canada — The Third Branch of Government*; *The Supreme Court in the Eighties*; and *Federalism and the Charter*.

Professor Emily Carasco, Windsor

Committee Chair, Appointed on 8 April 1992

Professor Emily Carasco brings extensive legal experience to the committee. An associate professor at the Faculty of Law, University of Windsor, she teaches Family Law and is actively involved in a number of projects related to the status of women and access to Justice. Professor Carasco is a member of the Board of Directors of the Ontario Confederation of University Faculty Associations and of the Gender Issues Committee of the Canadian Bar Association. In addition she is also a member of the Board of Directors of the South Asian Centre and the Windsor Committee, National Organization for Visible Minorities. Professor Carasco has a number of publications to her credit pertaining to the rights and status of children, women and minorities.

Thomas Bastedo, Toronto

Called to the Bar in 1971, Mr. Bastedo is a partner in the law firm of Bastedo, Sheldon, McGiveney and Peak. Mr. Bastedo's practice is confined to matrimonial work, except for some employment as a labour and family law mediator and arbitrator. He has been an instructor and lecturer for numerous law courses, conferences and seminars. Mr. Bastedo has participated in many family law related activities including being a founding director of Justice for Children and of the Ontario Association for Family Mediation. He is a former chair of the Family Law Section of the Ontario Branch of the Canadian Bar Association and the Family Law Section of the Canadian Bar Association. Mr. Bastedo is a bencher of the Law Society of Upper Canada and has served as the chair of the Clinic Funding Committee (former). Currently, he is the chair of the Legal Aid Committee, and the chair of the Family Law Speciality Committee, Certification Board and is a member of various standing and special committees. Mr. Bastedo represented the Law Society on the Judicial Appointments Advisory Committee until he tendered his resignation in January 1992.

Anne Cox, Thunder Bay

Ms. Anne Cox is Executive Director of the Thunder Bay Indian Friendship Centre and has overall responsibility for the delivery of a number of justice related programs including the Native Criminal Courtworker Program, Family Courtworker Program and the Native Inmate Liaison Worker Program. She was previously employed as the Executive Director of the community legal clinic from 1982 to 1989. Ms. Cox is currently a board member for the Ontario Native Council on Justice and is a resource person for Correctional Services Canada. She continues to participate on the Police Community Relations Committee and actively volunteers in the organization and development of the Native Sons Group, an inmate self-help group at the local Correctional Facility.

Donald Good, Kingston

Called to the Ontario Bar in 1952, Mr. Good started his career practising in St. Catharines and then moved to Kingston where he is now a partner in the law firm Good and Elliott. Mr. Good was active in the community, serving as the city alderman, member of the Public Utilities Commission and the Board for the Kingston Public Library. He is currently a member of the Council of the Canadian Bar Association and is their representative on the committee.

Valerie Kasurak, Windsor

Ms. Kasurak has a distinguished career of public service as a former citizenship judge, and a past member of the Ontario Human Rights Commission, the Advisory Committee on the Canada Pension Plan, University of Windsor Board of Governors and Ontario Press Council. Ms. Kasurak is a former member of the Institute of Chartered Accountants Discipline Committee.

Denise Korpan, London

Called to the Ontario Bar in 1981, Ms. Korpan a partner with the firm of Siskind, Cromarty, Ivey and Dowler. Ms. Korpan practises family law, estate litigation and is an Official Guardian representative for children. She is also an instructor at the Bar Admissions Course in London. She was selected as the Attorney General's lawyer-representative on the committee.

Patricia Park, Ottawa

As Executive Director of the Elizabeth Fry Society of Ottawa, Ms. Park was responsible for the management of the Society, a non-profit agency that provides services to women in conflict with the law. Other work experience includes positions in the provincial government and the social policy field. Ms. Park resigned from the committee on 15 November 1991.

Michelle Rocheleau, Timmins

Called to the bar in 1985, Ms. Michelle Rocheleau has since been in private practice. Ms. Rocheleau is also a member of the *Association des juristes d'expression française de l'Ontario*, an association of lawyers and judges devoted to promoting the use of French in the justice system in Ontario.

Ben Sennik, North York

Business Executive, heads the international operations of the family owned company based in Toronto. He is actively engaged in the community and social volunteer organizations. He is the President of the Toronto Organization for the Promotion of Indian Culture (TOPIC), a member of the Board of Governors of Humber College, and a member of the Ontario Anti-Racism Advisory Working Group.

Kay Sigurjonsson, Toronto

Kay Sigurjonsson is associate executive director of the Federation of Women Teachers' Association of Ontario. Her career has included teaching at the secondary and university levels, journalism, and, with the Federation of Women Teachers' Associations of Ontario, collective bargaining and pay equity, public relations, political action, administrative and executive responsibilities. Ms. Sigurjonsson's interests include women's, children's and native issues, civil liberties and human rights, the *Canadian Charter of Rights and Freedoms* and social legislation.

The Reverend David McCord, Ottawa

A former penitentiary chaplain, David McCord founded the Church Council on Justice and Corrections and served as its executive director for ten years. The Council, made up of criminal justice practitioners from all levels of the system representing ten national churches, is primarily concerned with policy analysis and research and the development of community based educational resources for local programming and animation. Church Council members are regularly called upon by governments for consultation regarding the development of legislation programmes and policy initiatives. They also resource church committees dealing with various aspects of Canadian criminal justice.

Associate Chief Judge Robert Walmsley, Toronto

Judge Walmsley was called to the Bar in 1954 and started his legal career as a partner in a law firm in Picton, Ontario. He also acted as a part-time judge in the eastern region and was appointed a provincial judge in August, 1968. He was subsequently appointed as the senior judge for Eastern Region and then the Associate Chief Judge of the Provincial Court (Family Division). Judge Walmsley is the representative on the committee nominated by the Ontario Judicial Council.

— APPENDIX 2 —

Excerpt from The Judicial Appointments Advisory Committee: *Interim Report*, (September 1990), pages 9-21.

VII: PROCEDURES

Set out below is a step-by-step account of how the committee arrives at its recommendations for filling vacancies. These procedures are still evolving. The committee continues to wrestle with the problem of trying to be fair to every candidate and give full consideration to all appropriate candidates for each position despite the very large number of applications and the limited amount of time at its disposal. The committee would certainly welcome suggestions on how these procedures might be improved but would ask that those who make suggestions bear in mind the limited amount of time that a volunteer committee can devote to this task.

1. *Notice of Vacancies*

The committee does not begin a selection round until the Attorney General informs the committee's Chairperson that appointments will be made to certain positions. In the past, the Chairperson has usually discussed these positions with the Chief Judge of the Division concerned to ascertain any particular features of the position — for instance, extensive travel or a language requirement — that should be mentioned in the advertisement. Now that the Criminal and Family Divisions have been combined to form the new Provincial Division of the Ontario Court of Justice, these communications will be with Chief Judge Sidney B. Linden who heads the new combined court.

To date, the committee has not been informed of vacancies until they occur or are quite imminent. The committee's procedures for completing a selection round take about three months and following its recommendations several more weeks are required for selection by the Attorney General, consideration by the Ontario Judicial Council and final decision by the Cabinet. Often this means that judicial vacancies are unfilled for several months resulting in great inconvenience to the public. This problem has been discussed with the Attorney General and Chief Judge Linden. Steps are now being taken to anticipate retirements so that the committee can begin the selection process well in advance of a vacancy.

2. *Advertising and Recruiting Candidates*

Very early in its deliberations, the committee decided that it was important to make the committee and its work as well known as possible. Accordingly, in each round, the positions on which the committee has been asked to make recommendations have been advertised in the *Globe and Mail* or the *Toronto Star*, local newspapers in the communities where the vacancies exist, the *Lawyers Weekly* and the *Ontario Reports*. The last publication is received by all members of the Law Society; the *Lawyers Weekly*, although a national paper available only by subscription, is widely read by most Ontario lawyers. The advertisement describes the positions that are vacant and the method of application and gives those who are interested a month to submit a completed Personal Information Form. Copies of the four advertisements are included in Appendix 2.

The response to these advertisements has been remarkable. At the time of the first advertisement, the committee received 167 applications. By the end of the second, it had 281

applications on file. In round three, the number went up to 396 and by the end of the fourth round the committee had received completed information forms from 452 candidates. Although some of these applications are from individuals who had applied earlier to the Attorney General and had been notified of the new procedure, a great many are new candidates. The committee was told by a number of candidates whom it subsequently interviewed that it was the advertisement that made them aware of the opportunity of being considered for judicial appointment even though they had no political connections. The committee thinks the advertisements have contributed to making the judiciary accessible to a much wider range of qualified lawyers.

The committee has not relied entirely on advertisements to recruit good candidates. It has contacted organizations and groups in touch with lawyers from sectors of society that in the past have not been well represented on the Provincial Court. This effort reflects one of the committee's criteria printed on every advertisement, namely that the committee believes the composition of the judiciary should better represent the diversity of Ontario's population. Among those contacted are legal aid clinics, women's organizations, Franco-Ontarians, West Indian and native lawyers organizations. The committee feels that it should do more of this in the future. The purpose of these contacts is not to solicit applications from any particular lawyer but to have these organizations encourage lawyers whom they respect to apply.

The human rights legislation does not permit the committee to collect information about the ethnic or racial background of applicants. Thus, the committee does not have data on this aspect in its pool of applicants. It does, however, know that 12% of the applications have been submitted by women. A recent study reports that 18% of Ontario lawyers are women. The percentage of lawyers with 10 years professional experience (the statutory requirement) who are women is probably above 12%. When the committee began, only ten (4%) of the provincial judges were women. Although nine (32%) of the twenty-eight appointments resulting from the committee's recommendations were given to women, there is some progress to be made in obtaining applications from an appropriate number of women lawyers.

3. The Personal Information Form

The committee spent a good deal of effort designing a personal information form for all candidates to complete. It studied forms used in other jurisdictions and got some helpful ideas from these, especially British Columbia's. But it also made its own improvisations. The committee wanted information that is not usually included in the standard *curriculum vitae* or resumé, such as, the nature of the work and the experience gained in the various positions candidates have held. The committee was also interested in seeing how applicants expressed their reasons for wanting to become a judge and their appraisal of their own qualifications for being a judge. Copies of the English and French versions of the form the committee is now using are attached as Appendix 3.

Several applicants have sent their standard *curriculum vitae* and have refused to complete the committee's form. The committee has refused to consider these candidates. In its view, a person who refuses to fill out the form is not interested enough in the position to warrant consideration. This is especially so when the committee finds there are so many excellent lawyers who, not only complete the form, but do so very thoughtfully. Besides, it is impossible to compare candidates who have not provided the basic written information that the committee needs.

This last point is important. The Personal Information Form serves more than the function of an application form; it also provides the information on which the committee bases its first “cut” of applicants. This first “cut” is to identify which candidates the committee will investigate further by way of contacting their referees and making other discreet inquiries. At the beginning, the committee hoped it would have been possible to contact referees and make inquiries about all applicants who met the statutory requirement of ten years’ professional legal experience. When, however, the committee was faced with the possibility of making six or seven calls on each of the 167 qualified applicants who responded to the first advertisement, the task seemed beyond it. This became even more evident as the applicant pool grew with subsequent rounds. So the committee decided that, on the basis of the written submissions alone, it would cut down the applicant pool for the next stage of collecting information.

At the end of the month within which candidates must apply, copies of the information forms of all applicants are sent to each committee member. Each member is also sent a list of all applicants from earlier rounds who have indicated that they are willing to serve in the areas currently advertised. The members individually then have ten days to two weeks to read through all relevant applications — for an average round there will certainly be more than 100 and perhaps closer to 200, each ten pages in length — and develop their own short list of the persons whom they consider to be outstanding candidates for each position. Generally, each of the members tries to arrive at a short list of five names for each position. These lists are then communicated to the chairperson who collates them onto a master sheet. The committee then applies the “rule of two”, which means that any name that appears on two or more lists goes on the list of persons about whom the committee will make further inquiries. This is not a hard and fast rule. If only one member has listed a particular candidate but feels strongly that this candidate should be given further consideration, the name is added to the list. Also, at this stage, the Attorney General has an opportunity to see the full list of candidates and indicate any one who he thinks merit being looked at further by the committee. At the end of this step in the process, the list of candidates to be looked at further will contain thirty-five to fifty names.

One further function is served by the Personal Information Form. On the first page, candidates indicate the areas of the province and the division of the court in which they prefer to serve and the additional areas where they are willing to serve. This information is stored in a computer data base so that, whenever new positions are advertised, the committee can automatically retrieve the names of persons who have previously applied and are available for these positions. The committee wants to ensure that these applicants are given as much consideration for the new positions as new applicants. Applicants are informed that, once their application is on file, it will remain active for three years. They are invited to send the committee information about changes in their career or community activities to be added to their file.

4. References and Discreet Inquiries

The committee decided that it did not want candidates to supply written letters of reference. In their experience, the members found that such letters were not very helpful. Almost invariably, they contained fulsome praise for the candidate without really providing much insight into the person’s strengths and not a whisper about possible weaknesses. Instead, the committee asks applicants to provide the names of four persons, one of whom should not be a lawyer or judge, whom the committee can contact on a confidential basis. At every stage in the process,

committee members have taken every caution and every effort to maintain confidentiality. The committee stipulates that the referees should have up-to-date knowledge of the candidate's professional work or community activity. When the committee first began it found that some of the persons listed had not been advised by the candidate that their name had been given as a reference. Accordingly, the committee now requests candidates to advise their referees. The committee also writes to each of the referees to give them some background information about the committee and its criteria, and to advise them that a member of the committee may soon telephone them.

The chairperson assigns to each committee member the names of referees to be called. For the most part, the lawyer members call lawyers, Judge Walmsley and Professor Russell call judges and the other lay members call the non-lawyer referees. But this division of labour is not rigid. The committee also tries to have members concentrate their calls in their own region of the province.

The committee's experience with calls to referees is mixed. At first, the committee encountered some reluctance on the part of referees to talk to members of the committee, particularly to lay members. But now that the committee is better known and provides some advance information, the committee is getting better co-operation. Naturally, nearly all who are called are positive about the person who has named them as a referee. Some do more than that and give insightful comments on the particular strengths of the candidate and sometimes even suggest possible weaknesses. Unfortunately, a fair number of candidates submit names of very well known, even famous people who, it turns out, do not appear to know the applicant very well. These calls are not helpful. Since the committee has been sending its criteria to referees, the members have found that some calls lack spontaneity as the referee goes rather mechanically through the list of criteria.

For those candidates who have graduated beyond the first "cut", the committee, in addition to its calls to referees, also makes discreet inquiries through its own sources of information, such as, lawyers or judges whom committee members believe can furnish information on candidates' professional ability and character. This work is divided up among members of the committee, although the burden of it falls primarily on the lawyer and judge members. It is very important wherever possible to obtain these appraisals from a number of lawyers and judges. But the number cannot be too great, otherwise the confidentiality of the applicants' candidacy that the committee undertakes to preserve would be jeopardized. The committee members have about two weeks in which to call referees and make discreet inquiries.

The information the committee has received from these independent sources, who are often leading members of the bar and bench, has been most helpful. Because of the committee's undertaking to treat the information the independent sources give it in confidence, the committee cannot disclose their identity; but would like to thank them here — anonymously.

5. Interviews

When the inquiry process has been completed, the committee meets to share the information that the members have learned through their calls and to agree on a short list of candidates to be interviewed. This meeting usually takes a full day. Deciding which candidates to interview is difficult because, at this stage, the committee usually has an embarrassment of riches — more excellent candidates than it can possibly interview. Nevertheless, the committee must reduce

the list to about three interviews for each position to be filled. Each interview takes about an hour, so that for five vacancies, there will be fifteen hours of interviewing, which is about the limit of the committee's capacity. Nonetheless, sometimes the committee is persuaded to extend the interview list because it simply cannot justify dropping a particular candidate from consideration at this stage.

After the interview list is drawn up, the candidates listed are notified and interviews are scheduled for about ten days to two weeks hence. Prior to the interviews, the committee's administrative officer asks the Law Society to inform the committee of any disciplinary matters or serious complaints on the candidates' professional records.

The interviews take place back-to-back. Usually they take two days to complete. In its third round of completion, with thirteen positions open, the committee spread the interviewing over four days with two sessions, a month apart.

The interviews are conducted on a confidential basis and the committee takes pains to try to ensure that candidates do not meet each other entering or leaving the interview room. The committee fears it would lose many good candidates if confidentiality were not maintained. Each interview takes forty-five to fifty minutes. All committee members have an opportunity to ask questions, but with seven to ten in attendance, no member can raise more than a few points. The questioning is structured around the committee's criteria. A small portion of the interview concerns the candidate's professional experience as the committee has already obtained a fair amount of information on this from the written application and its telephone calls. More of the interview focuses on candidates' approach to community and legal issues and on their conception of the judicial office. The committee realizes that there is a bit of a "grape-vine" about its interviews, so it has been trying to vary the themes that different members pursue. The committee has also asked the recently appointed judges who have been through its interviews to help the committee in writing hypothetical scenarios that might be introduced into the interview process.

The committee finds the interviews a useful way of augmenting the information obtained from the information forms, the referees and the discreet inquiries. Sometimes they confirm, but often they alter, impressions that have been formed on the basis of the other sources of information. Since the candidates selected for interviews have exceptional qualifications, the main purpose of the interview stage is not to eliminate candidates but to assess their relative merits and rank them. Many of the candidates interviewed, who do not quite make the top of the committee's lists in one round, are so good that the committee decides to keep them in mind for other appointments in the future. Increasingly as time goes by and there are changes in the membership of the committee, it becomes difficult to compare candidates who have impressed the committee in earlier interviews with new candidates. To deal with this, the committee has re-interviewed candidates.

6. Recommendation to the Attorney General

Immediately following completion of the interviews of candidates for a set of positions, the committee decides on the recommendations it will make to the Attorney General. The recommendations take the form of ranked lists for each position. Normally two or three persons are recommended for each position.

The committee endeavours, through a sustained and open discussion of the persons whom it has just interviewed and others who impressed it in earlier interviews, to arrive at a consensus. But the committee is not a monolithic body. There are significant differences among the members as to values and priorities. This means that sometimes the committee must agree to disagree about the relative merits of candidates. When this occurs, the committee submits both the majority's ranking and deviations from that ranking to the Attorney General. The committee explains whether the ranking is very close or whether a particular candidate in its view is much better than any other. If the committee was not unanimous, it reports the number of members who supported each ranking but does not disclose how individual members voted. The report takes the form of a confidential letter written by the chairperson to the Attorney General.

The submission of that letter completes the Judicial Appointments Advisory Committee's role in the selection process for that particular group of vacancies. A letter is written thanking the candidates who were interviewed for their participation in the process and asks them for any suggestions on how it might be improved. This has brought the committee some valuable advice. The letter advises them that the recommendations have been submitted to the Attorney General from whom they will hear fairly soon if they are proposed for appointment.

7. The Attorney General's Response

The Attorney General has responded to the committee's recommendations quite quickly and within a few days to a week has selected the candidates to be proposed for appointment from the ranked lists. With only one exception, the Attorney General has selected the persons ranked highest by the committee or, where there has been a split, by the majority.

The one exception occurred in unusual circumstances. Because none of the judges serving the particular region could conduct trials in French and there was a significant Francophone population in the area, the Attorney General was determined to appoint a fluently bilingual person to the position. He made this known to the community and to the committee. The committee's first recommendation for this position did not have a fully bilingual person at the top of its list. The Attorney General decided not to appoint any of the persons on this list and asked the committee if it could recommend a strong bilingual candidate. The committee then submitted the name of a bilingual candidate who was highly ranked but when the Attorney General received negative comments on the individual from the Judicial Council, the appointment was not made. The committee then endeavoured to generate some additional applications from bilingual candidates. It interviewed several more candidates and eventually was able to recommend a fully bilingual lawyer with outstanding qualifications who was then appointed to the position.

In two other cases, the committee's top ranked candidate was not appointed. The first instance occurred when the Judicial Council commented negatively on the candidate. The other occurred when the top candidate on the committee's list was selected by the Attorney General but declined the appointment.

8. The Ontario Judicial Council

As explained in Part II of this report, the Ontario Judicial Council continues to play a role in the judicial appointment process. The *Courts Of Justice Act* requires that the Attorney General obtain the Council's "comments" on any person whom he is proposing for appointment to the Provincial Court [now the Ontario Court of Justice (Provincial Division)]. Since the establishment of the Judicial Appointments Advisory Committee, the Attorney General has submitted the name

of the person selected from the committee's list to the Council for its advice. The names are submitted in "grey books" along with some basic biographical information. At its next scheduled meeting following receipt of this information, the Council interviews the persons named and then, through its chairperson, the Chief Justice of Ontario, gives its comments to the Attorney General.

Of the thirty names submitted to the Council since the committee's inception, two have been commented on negatively and as a result were not recommended by the Attorney General for appointment by the Lieutenant Governor in Council. Since the Council's comments are given on a confidential basis, they are not available to the committee. Nevertheless, the Chief Justice, without disclosing details, did inform the chairperson of Judicial Appointments Advisory Committee about the general areas of concern.

In fairness to all concerned, the details of these cases should not be discussed in a public report. Suffice it to say that the committee has expressed to the Attorney General its concerns about the accountability of the Ontario Judicial Council in the appointment process. The committee would find it helpful to have some statement of the criteria the Council applies or perhaps a statement of the Council's views on the Judicial Appointments Advisory Committee's criteria.

9. The Lieutenant Governor in Council

Under the *Courts of Justice Act*, provincial judges are formally appointed by the Lieutenant Governor in Council, that is, by the Cabinet. The names of proposed appointees are submitted for cabinet approval as soon as possible following approval by the Ontario Judicial Council. The Lieutenant Governor in Council has appointed all those selected by the Judicial Appointments Advisory Committee and approved by the Ontario Judicial Council. The committee regards this as another indication of the total absence of political interference in the arrangements now in place in Ontario for appointing judges to the Ontario Court of Justice (Provincial Division).

VIII: CRITERIA

Part of the committee's mandate has been to develop criteria for the selection of provincial judges. The committee began to work on this at its earliest meetings. The academic literature on the subject was consulted. Various members of the committee made proposals. A draft statement was drawn up and circulated to judges and lawyers for comment. The committee now has a statement of criteria that it can employ. This statement is sent to referees and to candidates before their interviews. The committee recently published the criteria along with its advertisement for the fourth round of vacancies. This statement is by no means cast in stone. Through this report, the committee again invites suggestions on how it might be improved.

The current summary statement of the criteria is set out below:

CRITERIA FOR EVALUATING CANDIDATES

Professional Excellence

- ☐ A high level of professional achievement in the area(s) of legal work in which the candidate has been engaged. Experience in the field of law relevant to the division of the Provincial Court on which the applicant wishes to serve is desirable but not essential.
- ☐ Involvement in professional activities that keep one up to date with changes in the law and in the administration of justice.
- ☐ An interest in or some aptitude for the administrative aspects of a judge's role.
- ☐ Good writing and communications skills.

Community Awareness

- ☐ A commitment to public service.
- ☐ Awareness of and an interest in knowing more about the social problems that give rise to cases coming before the courts.
- ☐ Sensitivity to changes in social values relating to criminal and family matters.
- ☐ Interest in methods of dispute resolution alternative to formal adjudication and in community resources available for participating in the disposition of cases.

Personal Characteristics

- ☐ An absence of pomposity and authoritarian tendencies.
- ☐ Respect for the essential dignity of all persons regardless of their circumstances.
- ☐ Politeness and consideration for others.
- ☐ Moral courage.
- ☐ An ability to make decisions.
- ☐ Patience and an ability to listen.
- ☐ Punctuality — good regular work habits.
- ☐ Good health.
- ☐ A reputation for integrity and fairness.
- ☐ Not involved in serious, unresolved professional complaints, civil actions or outstanding financial claims such as unpaid taxes.

Demographic

- ☐ The provincial judiciary should be reasonably representative of the population it serves. This requires overcoming the serious under-representation of women and several ethnic and racial minorities.

Career Plans

- The provincial judiciary should be open to those who may wish to serve for a limited number of years and resign before reaching retirement age as well as those who wish to finish their professional career on the bench.

Of course, as with any general set of criteria, much depends on how they are interpreted and applied. Although there are bound to be differences in the way committee members apply these criteria, the committee will try to indicate some principles of interpretation that are followed.

The first point is that the committee is looking for candidates who are excellent in the three basic aspects that it considers: professional achievement, community awareness and personality. For instance, none of the committee members would want to recommend for a judicial appointment a lawyer who, although deeply involved in community activity and of outstanding character, nevertheless was not well regarded by judges and lawyers familiar with the candidate's professional work. By the same token, the committee would not recommend a lawyer with a sterling professional reputation but who demonstrated indifference to the way that courts affect the society they serve and came across as crusty, disdainful and arrogant.

In the professional area, the committee does not have a fixed idea about the degree of specialized expertise required. A lawyer with a great deal of experience and impressive accomplishments in either the field of criminal law or family law would be regarded as a real asset to the Provincial Court bench. But the committee has also placed lawyers at the top of its list lawyers who have not had this kind of specialized experience but have given evidence of having very good general legal skills and a real capacity for learning. Now that the two divisions of the Provincial Court have been amalgamated into the Provincial Division of the Ontario Court of Justice, the committee thinks there is an even stronger case for staffing this court with a combination of specialists and generalists.

With regard to community involvement and awareness, the committee recognizes that it would be unreasonable to insist on a high level of participation in community organizations for every candidate who is to be highly recommended. Often there are personal circumstances — for instance, major family responsibilities — that leave little time for volunteer work in the community. What is most important to the committee in this area is evidence of an awareness of and interest in the major social issues on which courts administering criminal justice and dealing with family issues have such an impact. The committee is not looking for pat answers to these issues but it is looking for candidates who are well informed and genuinely concerned about them.

The committee's list of desirable character traits may seem to describe a paragon of virtue to which few could aspire. The committee does not expect all good candidates to have all of these qualities in abundance. At the very least, the committee is on the lookout for indicators of what it calls "judgitis", that is, characteristics of judges that attract the most frequent complaints. Foremost among these is a tendency to get carried away with the power and authority of judicial office and the inability to recognize the difference between dignity and pomposity, or between firmness and arrogance. Of course, no selection process, however meticulous, could examine candidates so closely as to ensure that no one appointed would ever be impatient, intolerant, humourless or dithering. But the committee does think it worthwhile to try as hard as possible

to avoid having persons appointed who show clear signs of having some of these qualities that can render even the most brilliant lawyer ill-qualified for the judicial role.

Besides these personal qualities, the committee is also concerned about the representative nature of the Ontario judiciary. The committee believes the judiciary will better serve the community if, in a sociological sense, it is reasonably representative of that community. The committee believes this for two reasons. First, it is important that the perspectives of the various racial and ethnic groups that make up our society, and the outlook and experience of women as well as men should influence how justice is administered. Judges have a great deal of discretion in interpreting and applying the law. In the Ontario Court of Justice (Provincial Division), this is particularly true with regard to sentencing and the resolution of family problems. This discretion will be exercised more effectively and fairly when the judiciary is not dominated by a single race, or ethnic group or gender. Second, the judiciary is likely to be more credible when significant sections of the community do not appear to be excluded from its membership. Judges of the Ontario Court of Justice (Provincial Division) exercise great powers; they can impose years of imprisonment on a citizen and authorize the removal of children from the custody of their parents. Those who are subject to such decisions are likely to have more confidence in their fairness when they see members of their own social group appointed to the court that makes them.

The committee does not pursue the objective of improving the representative nature of the judiciary by setting numerical quotas. Nor does the committee think professional quality or personal aptitude should be sacrificed in order to obtain a more representative judiciary. The committee is on the lookout for outstanding candidates from groups that it has reason to believe are seriously under-represented on the Ontario Court of Justice (Provincial Division). The committee will not, however, recommend a candidate from an under-represented group ahead of one who is not, if the latter, in all other respects, is clearly better qualified.

Finally, one other element of the committee's stated criteria refers to career plans. Here the committee wishes to make it clear that it welcomes applications both from those who would like to serve as a judge until retirement and those who plan a shorter judicial career of, say, five or ten years. The committee has included this point because it was advised by both judges and lawyers about the frequency of judicial "burn-out". The problems with which provincial judges deal, day in and day out, year in and year out, are often difficult and depressing. The committee can understand how, after a decade or two of this, a judge may wish a change of career. Of course, once appointed there is no legal obligation to resign before retirement age. The Law Society has assured the committee that its rules create no impediment for provincial judges who wish to resign and return to private practice.

— APPENDIX 3 —

**JUDICIAL APPOINTMENTS RECOMMENDED BY THE JUDICIAL APPOINTMENTS
ADVISORY COMMITTEE: JULY 1989 — AUGUST 1990**

Name	Location	Effective Date
Anderson, Charles	Brockville	15 August 1990
Baig, Dianne	Fort Frances	2 April 1990
Bonkalo, Annemarie	Brampton	2 April 1990
Bovard, Joseph	Toronto	31 December 1989
Crawford, James	Oshawa	1 June 1990
Flaherty, Roderick	Dryden	2 April 1990
Glaude, Normand	Elliott Lake*	17 April 1990
Hatton, Mary Jane	Toronto	2 April 1990
Knazan, Brent	Toronto	15 August 1990
Lenz, Kenneth	Simcoe/Norfolk	4 July 1989
Linden, Sidney B.	Toronto	25 April 1990
Lindsay, Eric S.	Toronto	1 September 1990
Linhares de Sousa, Maria	Ottawa	4 July 1989
Livingstone, Deborah	London	31 December 1989
MacPhee, Bruce	Brampton	2 April 1990
Main, Robert	Barrie	2 April 1990
Masse, Rommel	Ottawa*	4 July 1989
McGowan, Kathleen	St. Catharines	1 June 1990
Morgan, J. Rhys	Toronto	15 August 1990
Newton, Petra	Toronto	31 December 1989
Ormston, Edward	Toronto	31 December 1989
Reinhardt, Paul	Toronto	2 April 1990
Robson, M. Wendy	Peterborough	4 July 1989
Shamai, Rebecca	Brampton	2 April 1990
Stone, David	Oshawa	1 June 1990
Westman, Colin	Kitchener	1 June 1990
Wolder, Theo	Brampton	1 June 1990
Zabel, Bernd E.	Hamilton	24 April 1990

* denotes bilingual position

— APPENDIX 4 —

**JUDICIAL APPOINTMENTS RECOMMENDED BY THE JUDICIAL APPOINTMENTS
ADVISORY COMMITTEE: SEPTEMBER 1990 — JUNE 1992**

Name	Location	Effective Date
Allen, James	Brampton	15 November 1991
Bentley, Paul	Toronto	1 June 1992
Budzinski, Lloyd	Brampton	1 April 1992
Carr, Ralph	Sudbury	1 July 1991
Cavion, Bruno	Brampton	15 November 1991
Cole, David	Scarborough	1 March 1991
Dunbar, Mary F.	Brampton	1 February 1991
Fairgrieve, David	Brampton	21 December 1990
Hackett, Donna G.	Scarborough	21 December 1990
Hansen, Inger	Kitchener	1 February 1991
Hardman, Paddy	Kitchener	1 March 1991
Hryn, Peter	Toronto	1 June 1991
Hunter, Stephen	Ottawa	1 June 1991
Johnston, Karen	Oshawa	1 July 1991
Jones, Penny	Toronto	15 July 1991
Khawly, Ramez	Sarnia	1 December 1991
Khoorshed, Minoo	Toronto	1 June 1992
Lane, Marion	Brampton	1 February 1991
Lester, Ronald	Thunder Bay	1 March 1991
Marshman, Mary	Windsor	15 July 1991
Nicholas, Dianne	Ottawa	1 June 1991
Phillips, Douglas	Windsor	1 March 1991
Ratushny, Lynn	Ottawa	1 March 1991
Ray, Sheila	Toronto	15 April 1992
Ready, Elinore	Brampton	21 December 1990
Roberts, Marietta	Brampton	1 March 1991
Rogers, Sherrill	Newmarket	15 July 1991
Rosemay, Vibert	Brampton	1 December 1991
Salem, Harvey	Scarborough	1 March 1991
Schnall, Eleanor	London	1 March 1991
Sheppard, Patriek	Newmarket	1 June 1991
Simmons, Janet	Brampton†	21 December 1990
Stead, Brian	Simcoe	1 July 1991

† Judge Simmons was subsequently appointed to the General Division.

Taillon, Raymond	Oshawa	1 July 1991
Timms, David Roger	Oshawa	1 March 1991
Vaillancourt, Charles	Downsview	21 December 1990
Vyse, Diane Terry	Cambridge	1 March 1991
Waldman, Geraldine	Brampton	15 November 1991
Whetung, Timothy	Peterborough	1 December 1991

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